

REMARKS/ARGUMENTS

The foregoing amendment and the following arguments are provided to impart precision to the claims, by more particularly pointing out the invention, rather than to avoid prior art.

Reconsideration of this application, as amended, is respectfully requested. The following remarks are responsive to the Office Action mailed September 25, 2003.

Claims 1, 2, 4-8, 11-16, 18-21, and 23-26 are pending.

Claims 1,4, 5, 8, 15, 18-20 and 23-26 have been amended. It is respectfully submitted that no new matter is presented.

Claims 1, 2, 4-8, 11-16, 18-21, and 23-26 are rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent 6,421,707 of Miller, et al. ("Miller") and the alleged knowledge in the art.

35 U.S.C. § 103(a) Rejections

The Examiner rejected claims 1-2, 4-8, 11-16, 18-21 and 23-26 under 35 U.S.C. §103(a) as being unpatentable over Miller in view of the alleged knowledge in the art. Applicants disagree and submit that the pending claims are patentable under 35 U.S.C. §103 in view of Miller and the alleged knowledge.

In regard to the rejection of claim 1, under 35 U.S.C. §103(a), the Examiner has stated in part that:

Given the intended broad application of the Miller system, it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to apply a plurality of delivery vehicles instead of limiting the invention to just one, one reason would be to increase the flexibility of the system by reaching a larger user community when more than one vehicle can be used.

(9/25/03 Office Action, p. 3).

Regardless, applicants respectfully submit that amended independent claim 1 and dependent claims 2 and 4-7 are not obvious in view of Miller and the alleged knowledge in the art. In regard to the rejection of claim 1, even if Miller and the alleged knowledge in the art were combined, such a combination would lack one or more features of claim 1. Amended claim 1 recites the feature of “*delivering the notice via a second delivery vehicle of the at least two delivery vehicles when delivery by the first delivery vehicle is unsuccessful.*” (emphasis added) As shown by the following analysis, neither Miller, nor the alleged knowledge in the art, disclose this feature as stated in applicants' claim 1. Miller describes a wireless multi-media messaging communications method and apparatus. (Miller, title) Miller's apparatus includes a delivery subsystem 160 that handles the actual delivery of the output of its service, where the output need not be a “message” but could simply be notification that a message has been received. (Miller, col. 3, ll. 33-38) A user can set rules that determine how/when messages and their notification are to be treated. (Miller, col. 4, ll. 48-51). However, Miller is silent regarding what his system does when the message delivery fails. Thus, it is evident that Miller does not describe “*delivering the notice via a second delivery vehicle of the at least two delivery vehicles when delivery by the first delivery vehicle is unsuccessful.*” Nor has the Examiner demonstrated that the alleged knowledge in the art describes this claimed feature.

Thus, because neither, Miller nor the alleged knowledge in the art disclose this feature, applicants respectfully submit that claim 1 is not obvious under 35 U.S.C. §103(a) by Miller in view of the alleged knowledge in the art. Given that claims 2 and 4-7 depend from claim 1, applicants respectfully submit that claims 1-2 and 4-7 are not obvious under 35 U.S.C. §103(a).

The Examiner also rejected independent claim 8 under 35 U.S.C. §103(a) for the reasons set forth in the rejection of claim 1. Claim 8 discloses substantially similar limitations as claim 1, and recites “*utilizing a second delivery vehicle of the at least two delivery vehicles to send the notice when delivery by the selected delivery vehicle is unsuccessful.*” (Emphasis added) Because, neither Miller nor the alleged knowledge in the art disclose this feature as taught by

applicants' claim 8 from which claims 11-14 depend, for the reasons discussed above with regard to claim 1, applicants respectfully submit that claims 8 and 11-14 are not made obvious under 35 U.S.C. §103(a) by Miller in view of the alleged knowledge in the art.

The Examiner also rejected independent claim 15 under 35 U.S.C. §103(a) for the reasons set forth in the rejection of claim 1. Claim 15 discloses substantially similar limitations as claim 1, and recites "*delivering the notice via a second delivery vehicle of the at least two delivery vehicles when delivery by the first delivery vehicle is unsuccessful.*" (Emphasis added) Because neither Miller nor the alleged knowledge in the art disclose this feature as taught by applicants' claim 15 for the reasons discussed above with regard to claim 1, and given that claims 16, 18, and 19 depend from 15 applicants respectfully submit that claims 15-16 and 18-19 are not made obvious under 35 U.S.C. §103(a) by Miller in view of the alleged knowledge in the art.

The Examiner also rejected independent claim 20 under 35 U.S.C. §103(a) for the reasons set forth in the rejection of claim 1. Claim 20 discloses substantially similar limitations as claim 1, and recites "*means for delivering the notice via a second delivery vehicle of the at least two delivery vehicles when delivery by the first delivery vehicle is unsuccessful.*" (Emphasis added) Because, neither Miller nor the alleged knowledge in the art disclose these features as taught by applicants' claim 20 from which claims 21, and 23-26 depend, for the reasons discussed above with regard to claim 1, applicants respectfully submit that claims 21 and 23-26 are not made obvious under 35 U.S.C. §103(a) by Miller in view of the alleged knowledge in the art.

CONCLUSION

Applicants respectfully submit the present application is in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Sanjeet Dutta at (408) 947-8200.

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due.

Respectfully submitted,

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